

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

TRACY B.,

Plaintiff,

v.

Civil Action No. 2:23-cv-00742

MARTIN J. O'MALLEY,
Commissioner of Social Security,¹

Defendant.

MEMORANDUM OPINION AND ORDER

On November 17, 2023, plaintiff Tracy B. initiated this action seeking judicial review of a final decision of the defendant Martin J. O'Malley, Commissioner of Social Security (the "Commissioner"), pursuant to 42 U.S.C. section 405(g). Pending is plaintiff's complaint (ECF 1), which was previously referred to the Honorable Joseph K. Reeder, United States Magistrate Judge, for submission of proposed findings and recommendations ("PF&R").² Judge Reeder filed his PF&R on October 1, 2024 (ECF 10), to which

¹ Commissioner O'Malley was substituted in place of Acting Commissioner Kilolo Kijakazi following O'Malley's appointment on December 20, 2023.

² The matter was originally referred to Magistrate Judge Cheryl A. Eifert, and Judge Reeder was substituted by order of the Clerk upon Judge Eifert's retirement. ECF 9.

neither party objected.³ The PF&R recommends that the Commissioner's decision be reversed and that the case be remanded so that the Administrative Law Judge ("ALJ") may elaborate on its determination.

The court need not review, under a de novo or any other standard the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been raised. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." (emphasis added)). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989). Objections in this case having been due on October 18, 2024, and none having been filed, this matter may be duly adjudicated.

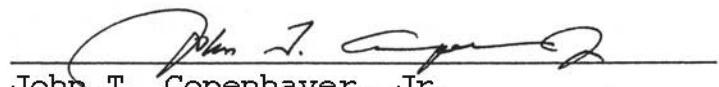
³ The deadline for objections to the PF&R, if served electronically, was October 15, 2024, and the deadline if the PF&R was served by mail was October 18, 2024. No objections were filed in either event.

Accordingly, it is ORDERED that:

1. The findings and recommendations made in the Magistrate Judge's Proposed Findings and Recommendations be, and hereby are, ADOPTED by the court and incorporated herein;
2. The plaintiff's motion to the extent that it requests remand of the Commissioner's decision is GRANTED;
3. The Commissioner's request to affirm his decision be, and hereby is, DENIED;
4. The Commissioner's final decision be, and hereby is, VACATED; and
5. This civil action be, and hereby is, REMANDED to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) in accordance with the Magistrate Judge's proposed findings and recommendation; and
6. This civil action be, and hereby is, DISMISSED from the docket of this court.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: October 23, 2024



John T. Copenhaver, Jr.
Senior United States District Judge